

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated December 23, 2008. Reconsideration and allowance of the application in view of the remarks to follow are respectfully requested.

Claims 1-24 are pending in the Application. Claims 1, 7, 13 and 19 are independent claims.

In the Office Action, claims 1-24 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,885,871 to Caloud ("Caloud") in view of U.S. Patent No. 6,904,055 to Pichna ("Pichna"). This rejection is respectfully traversed. It is respectfully submitted that claims 1-24 are allowable over Caloud in view of Pichna for at least the following reasons.

It is undisputed that Caloud fails to disclose or suggest, (emphasis added) "direct delivery of the multimedia message." (See, Office Action, page 3.)

What is apparently not recognized by the Office Action is that in fact, Caloud teaches away from a direct communication between the personal computer and the cell phone. In fact, Caloud teaches that "[t]he gateway 128 is thus in a position to filter messages addressed to the terminal 108 and thus avoid undesirable messages."

(See, Col. 8, lines 61-63.) Accordingly, Caloud teaches a communication network wherein the gateway 128 acts as a go-between for the terminals 102, 108 (see, FIG. 1) to avoid undesirable messages.

While the Office Action cites Pichna for showing a direct connection between the terminals, it is respectfully submitted that the Office Action may not utilize Pichna for supplying an element to Caloud, when Caloud teaches away from such a direct communication between the terminals. "If when combined, the references 'would produce a seemingly inoperative device,' then they teach away from their combination." (In re Sponnoble, 405 F.2d 578, 587, 160 USPQ 237, 244 (CCPA 1969). Further, there is no suggestion to modify a prior art reference where the modification would render the device inoperable for its intended purpose. (In re Gordon, 733 F.2d 900 (Fed. Cir. 1984))

It is respectfully submitted that in Caloud, the gateway 128 is taught as an intermediary for all communications between the terminals to avoid undesirable messages being exchanged between the terminals. Accordingly, one may not utilize the further reference Pichna to modify Caloud since Caloud explicitly teaches away from such a modified configuration.

In addition, while Pichna shows assistance of communication between terminals by a cellular network, it is respectfully submitted that the assistance is limited to "describing the status and the layout of the network, especially the ad hoc parts of the network, which can then be used for determining the optimal route for each requested connection." (See, Pichna, Col. 8, lines 27-33.)

Accordingly, it is respectfully submitted that the system of claim 1 is not anticipated or made obvious by the teachings of Caloud in view of Pichna. For example, Caloud in view of Pichna does not disclose or suggest, a system that amongst other patentable elements, comprises (illustrative emphasis provided) "wireless network system that enables direct wireless delivery of a multimedia message from a first multimedia messaging service (MMS) user agent to a second MMS user agent, the system comprising: means for receiving, from the first MMS user agent, a request to send a multimedia message to the second MMS user agent, the request including an identification (ID) number of the second MMS user agent; means for obtaining an Internet address of the second MMS user agent based on the ID number of the second MMS user agent, if the ID number is not an Internet address of the second MMS user

agent; and means for forwarding the obtained Internet address to the first MMS user agent to enable the first MMS user agent to wirelessly deliver the multimedia message directly to the second MMS user agent using the obtained Internet address" as required by claim 1, and as substantially required by each of claims 7, 13 and 19. In fact Caloud teaches terminal 101 communicating to terminal 108 via the internet gateway 128, and teaches away from a direct communication between the terminals.

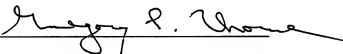
Based on the foregoing, the Applicants respectfully submit that independent Claims 1, 7, 13 and 19 are patentable over Caloud in view of Pichna and notice to this effect is earnestly solicited. Claims 2-6, 8-12, 14-18 and 20-24 respectively depend from one of claims 1, 7, 13 and 19 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the

presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

Gregory L. Thorne, Reg. 39,398
Attorney for Applicant(s)
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THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101